Appendix 1 Adult Social Care Reform White Paper Report to Cabinet 21 April 2022

Impact Assessment of the Implementation of Section 18(3) of The Care Act 2014 and Fair Cost of Care

A Report Commissioned by The County Councils Network, MARCH 2022

The summary of the key conclusions of the report are as follows:

- DHSC appears to have severely underestimated the cost of implementing a Fair Fees policy. LaingBuisson’s estimates of costs to councils of implementing Fair Fees that are sustainable for the care sector are orders of magnitude higher than those cited in the DHSC’s Impact Assessment document. This in turn raises concerns that the Government has seriously underestimated the amount of new funding required to make the combined Fair Cost of Care / Section 18(3) strategy work effectively.
- In its Impact Assessment, the government have not sought thus far to estimate the combined financial impact of Section 18(3). But our analysis demonstrates that based on a 50% take up rate of 18(3) and current Fair Cost of Care funding levels for councils, providers across the country would experience significant financial challenges as a result of lost revenues amounting to £560m per annum. Providers in County & CCN Unitary authorities would account for 86% of all net financial losses to the social care sector, with the largest loses in the South-East, East of England and South-West, reflecting these council areas geographical spread and high levels of self-funders.
- In order to prevent the widespread market instability that would result from these revenue losses, councils’ Fair Cost of Care would need to be raised significantly compared to current government funding estimates to offset these losses and ensure on-going investment in the social care sector, particularly in the short term.
- LaingBuisson’s central estimate is that this would require government to raise funding allocations by at least £854m per annum for Fair Cost of Care in residential and nursing care homes to enable councils to pay fee levels at a sustainable rate and avoid market disruption. However, even if councils were funded at this Fair Cost of Care level, some care economies would still face financial significant pressures as a result of the impact of Section 18(3).
- Given past and current funding challenges already facing councils, they are extremely unlikely to be in the position to fund fee increases above current funding allocations without a detrimental impact on existing social care services or challenging their own financial sustainability.
- Therefore, without additional resources from central government, councils will face the possibility of provider failure and market exits. This will negatively impact on the ability of councils to secure high quality care placements for those eligible for local authority arranged care, in addition to market exits impacting on the availability of provision for the NHS of continuing health care.
- The reforms introduce new market shaping and fee negotiations duties for councils hitherto not witnessed before. It is important to consider the significant historical challenges in fee negotiations with providers and the success in undertaking fair cost of care exercises. Even if Government were to provide further resources for Fair Cost of Care, there are likely to be significant challenges in conducting these exercises with providers within a relatively short timescale on

behalf of both local authority and new self-funder clients, alongside new administrative burdens for councils.
- The DHSC Impact Assessment is based on somewhat limited understanding of how care homes currently work commercially, and an idiosyncratic view as to how negative effects of equalisation of fees might be managed, for example, ‘ reducing the size of home or transferring elsewhere’. More seriously, the DHSC impact assessment states providers will have to 'consider options, including but not limited to seeking self-funders from elsewhere, reducing the size of home or transferring elsewhere’ will likely be met with widespread scepticism, as well as alarm, in the care sector.
- Overall, LaingBuisson questions whether the full implementation of Section 18(3) of The Care Act 2014 is the right policy at the right time. The implementation of such wholesale changes to funding models comes at a time when the care market is particularly fragile in the aftermath of the COVID-19 pandemic, with significant regional blackspots.

Recommendations

- The Government urgently reassess funding allocations to support the combined implementation of Fair Cost of Care and Section 18(3) from 2023/24 onwards. Our central estimate is that this would require Government to raise funding allocations by at least £854m per annum for Fair Cost of Care in residential and nursing care homes to enable councils to pay rates at a rate that is sustainable to providers and able to offset the impact of Section 18(3).
- Overall, LaingBuisson questions whether the full implementation of Section 18(3) of The Care Act 2014 is the right policy at the right time. The implementation of such wholesale changes to funding models comes at a time when the care market is particularly fragile in the aftermath of the COVID-19 pandemic, with significant regional blackspots.
- The timetable implied by a full implementation in October 2023, with six ‘Trailblazer’ local authorities potentially working towards implementation in January 2023, is ambitious, given the multiple stakeholders and dimensions of the proposed reforms. The timetable should be reconsidered, and robust pilots be given more time.
- DHSC predicts an 80% take-up in registration for the care costs cap, but it has made no detailed forecasts for the take-up by the public of Section 18(3). Research should be undertaken into the behavioural side of the policy implementation and the pathway for residents, both existing and prospective.
- The Fair Cost of Care must be agreed by each local authority working with its local care association, or, where such associations do not exist, with groups of providers. Guidance for such exercises has not been disseminated. DHSC should revisit previous evidence of the difficulties of agreeing such fair cost of care.
- Despite the increasingly collaborative relationship between local authorities and NHS bodies, particularly Clinical Commissioning Groups, and the advent of Integrated Care Systems, it appears NHS-funded residents (those with both a health and care need) will not be included in the Section 18(3) provisions. Clarity on the direction of travel would be welcome.

- Although DHSC has confirmed it will encourage ‘top ups’ where appropriate, it should further research the way top ups currently work and the way in which they may now assume particular importance to providers which require higher fee rates than offered by a Fair Cost of Care.
- DHSC should release details of infrastructure and technology to allow for current assessment capacity at county council to be significantly extended to cope with the demand for such assessments which will be triggered by Section 18(3).
- DHSC should engage with the investor community to explain its vision for Section 18(3) and to canvass views from investors, lenders and other financial stakeholders, so as to avoid a potential ‘cliff edge’ adverse reaction to the proposed reforms in the coming months.